United Nations A/60/88

General Assembly

Distr.: General
27 June 2005

Original: English

Sixtieth session
Item 98 of the preliminary list*
General and complete disarmament

Report of the Open-ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons

I. Introduction

1. By its resolution 58/241 of 23 December 2003, the General Assembly decided to establish an open-ended working group, to meet in three sessions of two weeks each, to negotiate an international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons.

2. The Assembly also decided that the open-ended working group should hold an organizational session in New York on 3 and 4 February 2004 in order to set the dates for its substantive sessions.

II. Organizational matters

A. Organization of work

3. The Open-ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons held its organizational session at United Nations Headquarters in New York on 3 February 2004. During that meeting, the Open-ended Working Group considered organizational matters and the timetable for its substantive sessions.

4. The Disarmament and Decolonization Affairs Branch of the Department for General Assembly and Conference Management and the Conventional Arms Branch of the Department for Disarmament Affairs served as the secretariat to the Working Group.

* A/60/50 and Corr.1.

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5. The 1st (organizational) meeting of the Working Group was opened by the Under-Secretary-General for Disarmament Affairs, Nobuyasu Abe, who conducted the election of the Chairperson of the Working Group.

B. Composition of the Bureau

6. At its 1st meeting, on 3 February 2004, the Working Group elected the following officers by acclamation:

Chairman:

Anton Thalmann (Switzerland)

Vice-Chairpersons:

Marc Pecsteen de Buytswerve (Belgium)
Lucia Maria Maierá (Brazil)
Li Song (China)
José Nicolás Rivas (Colombia)
Detlev Wolter (Germany)
Sanjiv Ranjan (India)
Shutaro Omura (Japan)
Rosita Šorytė (Lithuania)
Andrea Garcia Guerra (Mexico)
Lotfi Bouchaara (Morocco)
Tamara Rastovac (Serbia and Montenegro)
Sylvester Rowe (Sierra Leone)
Ncumisa Notutela (South Africa)
Oleh Pavlyshyn (Ukraine)

C. Adoption of the agenda

7. At the same meeting, on 3 February, the Working Group adopted the provisional agenda for its organizational session, as contained in document A/AC.270/2004/L.1, as follows:

1. Opening of the meeting by the Under-Secretary-General for Disarmament Affairs.
2. Election of the Chairperson.
3. Election of other members of the Bureau.
4. Adoption of the agenda.
5. Timetable for substantive sessions.
6. Other matters.

D. Dates for substantive sessions

8. At the same meeting, the Working Group decided to hold its first substantive session from 14 to 25 June 2004; its second substantive session from 31 January to 11 February 2005; and its third substantive session from 6 to 17 June 2005.

III. First substantive session

9. The Working Group held 18 meetings (2nd to 19th) during its first substantive session. At the 2nd meeting, on 14 June 2004, a statement was made by the Under-Secretary-General for Disarmament Affairs.

10. At the same meeting, the Working Group adopted the provisional programme of work and provisional agenda for the session as contained in documents A/AC.270/2004/CRP.1 and A/AC.270/2004/CRP.2, respectively. The Working Group agreed to divide its work into several phases: a general debate; statements by intergovernmental organizations and representatives of civil society; a thematic debate on the three elements of tracing, namely marking, record-keeping and international cooperation; and other matters. The Chairman also produced and distributed a non-paper to assist the Working Group in its discussions.

11. Five meetings (the 2nd to 6th) were allocated to the general debate. Statements were made by the representatives of Ireland (on behalf of the European Union), Peru, South Africa, Canada, the United States of America, China, Japan, Belarus, Morocco, Australia, Nigeria (on behalf of the African Group of States), Brazil, Indonesia, New Zealand, Venezuela, Norway, Egypt, Colombia, Switzerland, the Russian Federation, the Philippines, Rwanda, Algeria, Trinidad and Tobago, the Democratic People's Republic of Korea, Chile, Guatemala, Argentina, the Republic of Korea, Serbia and Montenegro, Cuba, Costa Rica, Nigeria, Iran (Islamic Republic of), the Bahamas (on behalf of the Caribbean Community), Sri Lanka, Jamaica, Guyana, Nepal, Pakistan and India.

12. At its 6th meeting, on 16 June, the Working Group held an exchange of views on the character of the instrument, with statements made by the representatives of Sierra Leone, Senegal, South Africa, Ireland (on behalf of the European Union), Brazil, Morocco, Poland, the United States, the Russian Federation, China, Canada, Australia, Mexico, the Republic of Korea, Switzerland, Japan, Colombia, Nigeria, Egypt, France, Iran (Islamic Republic of), Germany and Pakistan.

13. At the 7th meeting, on 17 June, statements were made by representatives of international and regional organizations. The representatives of the International Committee of the Red Cross, the International Civil Aviation Organization, the Organization of American States, Interpol, Myanmar (on behalf of the Association of Southeast Asian Nations), the United Nations Development Programme, the United Nations Institute for Disarmament Research, Armenia (on behalf of the Organization for Security and Cooperation in Europe) and Kenya (on behalf of the Nairobi Secretariat on Small Arms and Light Weapons) made statements.

14. The Working Group heard presentations from representatives of civil society at its 8th meeting. Statements were made by the representatives of the International Action Network on Small Arms, Viva Rio, Groupe de recherche et d'information sur la paix et la sécurité, Maryknoll Fathers and Brothers and Maryknoll Sisters of St. Dominic, and the World Forum on the Future of Sport Shooting Activities.

15. From the 9th to the 19th meetings, the Working Group conducted thematic discussions on the three elements of tracing: marking, record-keeping and international cooperation. For this phase of work, the Chairman had prepared and circulated questionnaires on these three elements in order to facilitate the discussions.

16. At its 18th meeting, on 24 June 2004, the Working Group decided to change the dates for its second substantive session from 31 January-11 February 2005 to 24 January-4 February 2005.

IV. Second substantive session

17. At its 20th meeting, on 24 January, the Working Group adopted the provisional agenda and draft programme of work for its second substantive session, as contained in documents A/AC.270/2005/L.1 and A/AC.270/2005/CRP.1, respectively. The Chairman introduced a draft text, which was based on the inputs provided by delegations during the first session of the Working Group and had been circulated to delegations in December 2004, prior to the session.

18. The Working Group proceeded with its work by conducting a general exchange of views followed by a first reading of the Chairman's draft text, paragraph by paragraph. The Working Group also held discussions on the question of the character of the instrument. Throughout the process, delegations provided written proposals and comments on the Chairman's draft text.

19. Based on the first reading and written proposals provided by delegations, the Chairman introduced a second draft at the 31st meeting, on 1 February, and the translated versions of the text were made available to the Working Group on 3 February. From the 33rd to 38th meetings, the Working Group conducted a second reading of the second draft text.

20. At the 38th meeting, on 4 February, the Chairman stated that he would prepare a third revised text well in advance of the third and final substantive session of the Working Group, taking into account the discussions held and the written proposals submitted during the second substantive session.

V. Third substantive session

21. The Working Group held its third substantive session from 6 to 17 June 2005. At its 39th meeting, on 6 June, the Working Group adopted its provisional agenda and draft programme of work for the session as contained in documents A/AC.270/2005/L.2 and A/AC.270/2005/CRP.2, respectively.

22. From the 39th to 47th meetings, the Working Group conducted a paragraph-by-paragraph reading of the third draft text prepared by the Chairman. Throughout the process, both the Chairman and delegations provided proposals on compromise language for the various paragraphs. The Chairman also designated facilitators for the following issues: definitions (Brazil), marking at import (Belgium), ammunition in all its aspects (South Africa) and the character of the instrument (India).

23. From its 48th to 53rd meetings, the Working Group conducted a second reading of the third draft text, focusing on paragraphs which lacked consensus. The Working Group proceeded with a third reading of all outstanding paragraphs from the 54th to 56th meetings.

24. At its 57th meeting, on 17 June, the Chairman presented to the Working Group his compromise proposals on all outstanding paragraphs. At the same meeting, statements were made by the delegations of Paraguay (on behalf of the Common

Market of the South), Mexico, Norway, Sierra Leone, Uganda, Argentina, Colombia, Uruguay, Venezuela, Costa Rica, Peru, Brazil, Guatemala, Ecuador, Malaysia, Indonesia, Cuba, Senegal, India, Egypt, Nigeria, Luxembourg (on behalf of the European Union), Bolivia, Spain, the United States, Jamaica, Australia, Kenya, Pakistan, Japan, Zimbabwe, Morocco, the Republic of Korea, China, Algeria, Turkey, Ghana, the Russian Federation, Canada and Israel on the character of the instrument.

25. At the 58th meeting, the Working Group considered the Chairman's compromise proposals and all outstanding paragraphs and issues. The Group also considered its draft report as contained in document A/AC.270/2005/CRP.3.

VI. Recommendations

26. In accordance with its mandate as contained in General Assembly resolution 58/241, the Working Group devoted a total of 58 meetings to negotiate an international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons. The Working Group was able to reach consensus on a draft international instrument of a political character and therefore recommends that the General Assembly adopt the draft instrument annexed to the present report at its sixtieth session.

27. The Working Group recommends that the issue of small arms and light weapons ammunition be addressed in a comprehensive manner as part of a separate process conducted within the framework of the United Nations.

28. The Working Group recommends that the issue of the applicability of provisions of the draft instrument to United Nations peacekeeping operations be considered further within the framework of the United Nations.

VII. Adoption of the report of the Open-ended Working Group

29. At its 58th meeting, on 17 June, the Working Group adopted by consensus its report to the General Assembly at its sixtieth session.

Annex

Draft International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons

Preamble

States,

Noting that in the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,[1] States identified the tracing of illicit small arms and light weapons as a key mechanism for national, regional and/or international efforts to prevent, combat and eradicate illicit small arms and light weapons and committed themselves to strengthening the ability of States to cooperate in identifying and tracing in a timely and reliable manner illicit small arms and light weapons,

Noting also that the tracing of illicit small arms and light weapons, including but not limited to those manufactured to military specifications, may be required in the context of all forms of crime and conflict situations,

Recalling the report on the feasibility of developing an international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons,[2] prepared by the Group of Governmental Experts established pursuant to General Assembly resolution 56/24 V of 24 December 2001,

Recalling also General Assembly resolution 58/241 of 23 December 2003, in which the Assembly, pursuant to the recommendation of the Group of Governmental Experts, decided to establish an open-ended working group to negotiate such an instrument,

Noting that, pursuant to resolution 58/241, this instrument is complementary to, and not inconsistent with, the existing commitments of States under relevant international instruments, including the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime,[3]

Noting also that, pursuant to resolution 58/241, this instrument takes into account the national security and legal interests of States,

Convinced of the need for an effective international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons,

Stressing that all aspects relating to illicit small arms and light weapons should be addressed in a coordinated and comprehensive manner,

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[1] See *Report of the United Nations Conference on Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 9-20 July 2001* (A/CONF.192/15), para. 24.

[2] A/58/138.

[3] General Assembly resolution 55/255, annex.

Stressing also the urgent necessity for international cooperation and assistance, including financial and technical assistance, as appropriate, to support and facilitate efforts to effectively implement this instrument,

Have agreed henceforth as follows:

I. General provisions

1. The purpose of this instrument is to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons.

2. The purpose of this instrument is also to promote and facilitate international cooperation and assistance in marking and tracing and to enhance the effectiveness of, and complement, existing bilateral, regional and international agreements to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects.

3. This instrument does not restrict the right of States to acquire, manufacture, transfer and retain small arms and light weapons for their self-defence and security needs, as well as for their capacity to participate in peacekeeping operations, in a manner consistent with the Charter of the United Nations.

II. Definitions

4. For the purposes of this instrument, "small arms and light weapons" will mean any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive, excluding antique small arms and light weapons or their replicas. Antique small arms and light weapons and their replicas will be defined in accordance with domestic law. In no case will antique small arms and light weapons include those manufactured after 1899:

(a) "Small arms" are, broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns;

(b) "Light weapons" are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 100 millimetres.

5. For the purposes of this instrument, "tracing" is the systematic tracking of illicit small arms and light weapons found or seized on the territory of a State from the point of manufacture or the point of importation through the lines of supply to the point at which they became illicit.

6. For the purposes of this instrument, small arms and light weapons are "illicit" if:

(a) They are considered illicit under the law of the State within whose territorial jurisdiction the small arm or light weapon is found;

(b) They are transferred in violation of arms embargoes decided by the Security Council in accordance with the Charter of the United Nations;

(c) They are not marked in accordance with the provisions of this instrument;

(d) They are manufactured or assembled without a licence or authorization from the competent authority of the State where the manufacture or assembly takes place; or

(e) They are transferred without a licence or authorization by a competent national authority.

III. Marking

7. The choice of methods for marking small arms and light weapons is a national prerogative. States will ensure that, whatever method is used, all marks required under this instrument are on an exposed surface, conspicuous without technical aids or tools, easily recognizable, readable, durable and, as far as technically possible, recoverable.

8. For the purpose of identifying and tracing illicit small arms and light weapons, States will:

(a) At the time of manufacture of each small arm or light weapon under their jurisdiction or control, either require unique marking providing the name of the manufacturer, the country of manufacture and the serial number, or maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code, permitting ready identification by all States of the country of manufacture; and encourage the marking of such additional information as the year of manufacture, weapon type/model and calibre;

(b) Taking into account that import marking is a requirement for the States parties to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, require to the extent possible appropriate simple marking on each imported small arm or light weapon, permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the small arm or light weapon; and require a unique marking, if the small arm or light weapon does not already bear such a marking. The requirements of this subparagraph need not be applied to temporary imports of small arms and light weapons for verifiable, lawful purposes, nor for the permanent import of museum artefacts;

(c) Ensure, at the time of transfer from government stocks to permanent civilian use of a small arm or light weapon that is not marked in a manner that allows tracing, the appropriate marking permitting identification of the country from whose stocks the transfer of the small arm or light weapon is made;

(d) Take all necessary measures to ensure that all small arms and light weapons in the possession of government armed and security forces for their own use at the time of adoption of this instrument are duly marked. Markings on these small arms and light weapons do not necessarily have to meet the requirements of subparagraph 8 (a) above;

(e) Encourage manufacturers of small arms and light weapons to develop measures against the removal or alteration of markings.

9. States will ensure that all illicit small arms and light weapons that are found on their territory are uniquely marked and recorded, or destroyed, as soon as possible. Pending such marking, and recording in accordance with section IV of this instrument, or destruction, these small arms and light weapons will be securely stored.

10. States will ensure that every small arm or light weapon always receives the unique markings prescribed in subparagraph 8 (a) above. A unique marking should be applied to an essential or structural component of the weapon where the component's destruction would render the weapon permanently inoperable and incapable of reactivation, such as the frame and/or receiver, in compliance with paragraph 7 above. States are encouraged, where appropriate to the type of weapon, also to apply the marking prescribed in subparagraph 8 (a) above or other markings to other parts of the weapon such as the barrel and/or slide or cylinder of the weapon, in order to aid in the accurate identification of these parts or of a given weapon.

IV. Record-keeping

11. The choice of methods for record-keeping is a national prerogative. States will ensure that accurate and comprehensive records are established for all marked small arms and light weapons within their territory and maintained in accordance with paragraph 12 below in order to enable their competent national authorities to trace illicit small arms and light weapons in a timely and reliable manner.

12. From the time of the adoption of this instrument, records pertaining to marked small arms and light weapons will, to the extent possible, be kept indefinitely, but in any case a State will ensure the maintenance of:

(a) Manufacturing records for at least 30 years; and

(b) All other records, including records of import and export, for at least 20 years.

13. States will require that records pertaining to small arms and light weapons held by companies that go out of business be forwarded to the State in accordance with its national legislation.

V. Cooperation in tracing

General

14. While the choice of tracing systems will remain a national prerogative, States will ensure that they are capable of undertaking traces and responding to tracing requests in accordance with the requirements of this instrument.

15. States receiving information related to tracing illicit small arms and light weapons in accordance with the provisions of this instrument and in the context of a tracing request will respect all restrictions placed on its use. Furthermore, States will guarantee the confidentiality of such information. Restrictions on use may include, inter alia:

(a) The information exchanged will be released only to competent authorities designated by the requesting State and/or authorized personnel, to the extent necessary for the effective implementation of this instrument;

(b) The information exchanged will be used only for purposes consistent with this instrument; or

(c) The information exchanged may not be released to anyone else without the prior consent of the State providing that information.

Where for legal, constitutional or administrative reasons, the confidentiality of the information cannot be guaranteed or the restrictions placed on its use in accordance with the present paragraph cannot be maintained by the requesting State, the requested State will be so informed at the time the tracing request is made.

Tracing requests

16. A State may initiate a tracing request in relation to small arms and light weapons found within its territorial jurisdiction that it considers to be illicit under the provisions of paragraph 6 above.

17. To ensure smooth and effective cooperation in tracing, requests for assistance in tracing illicit small arms or light weapons will contain sufficient information, including, inter alia:

(a) Information describing the illicit nature of the small arm or light weapon, including the legal justification therefor and, to the extent possible, the circumstances under which the small arm or light weapon was found;

(b) Markings, type, calibre and other relevant information to the extent possible;

(c) Intended use of the information being sought.

Responses to tracing requests

18. States will provide prompt, timely and reliable responses to tracing requests made by other States.

19. States receiving a tracing request will acknowledge receipt within a reasonable time.

20. In responding to a tracing request, the requested State will provide, subject to paragraph 22 below, all available information sought by the requesting State that is relevant for the purpose of tracing illicit small arms and light weapons.

21. The requested State may seek additional information from the requesting State where a tracing request does not contain the information required in paragraph 17 above.

22. States may delay or restrict the content of their response to a tracing request, or refuse to provide the information sought, where releasing the information would compromise ongoing criminal investigations or violate legislation providing for the protection of confidential information, where the requesting State cannot guarantee the confidentiality of the information, or for reasons of national security consistent with the Charter of the United Nations.

23. If a State delays or provides a restricted response to a tracing request, or refuses to provide the information sought, on the grounds identified in paragraph 22 above, it will inform the requesting State of the reasons for this. The requesting State may subsequently seek clarification of this explanation.

VI. Implementation

General

24. In accordance with their constitutional processes, States will put in place, where they do not exist, the laws, regulations and administrative procedures needed to ensure the effective implementation of this instrument.

25. States will designate one or more national points of contact to exchange information and act as a liaison on all matters relating to the implementation of this instrument.

26. States will cooperate on a bilateral and, where appropriate, on a regional and international basis to support the effective implementation of this instrument.

International cooperation and assistance

27. States in a position to do so will, upon request, seriously consider rendering technical, financial and other assistance, both bilaterally and multilaterally, in building national capacity in the areas of marking, record-keeping and tracing, in order to support the effective implementation of this instrument by States.

28. States in a position to do so are also encouraged to seriously consider international cooperation and assistance to examine technologies that would improve the tracing and detection of illicit small arms and light weapons, as well as measures to facilitate the transfer of such technologies.

29. States will encourage initiatives, within the framework of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,[1] that mobilize the resources and expertise of, and where appropriate cooperation with, relevant regional and international organizations to promote the implementation of this instrument by States.

United Nations

30. States will cooperate, as appropriate, with the United Nations to support the effective implementation of this instrument.

31. States will, as soon as possible after the adoption of this instrument, provide the Secretary-General, through the Department for Disarmament Affairs of the Secretariat, with the following information, updating it when necessary:

(a) Name and contact information for the national point(s) of contact;

(b) National marking practices related to markings used to indicate country of manufacture and/or country of import as applicable.

32. States hereby request the Secretary-General to collate the information provided by States pursuant to paragraph 31 above and to issue it to States Members of the United Nations, providing the assistance requested for the implementation of the instrument by States, as well as assisting States to interact on a bilateral basis.

International Criminal Police Organization

33. States, where appropriate, will cooperate with the International Criminal Police Organization (Interpol) to support the effective implementation of this instrument.

34. States that are members of Interpol will promote the implementation of this instrument when participating in Interpol's organs.

35. States, where appropriate, in accordance with Interpol's statutory rules, are encouraged to make full use of Interpol's mechanisms and facilities in implementing this instrument. Interpol may, at the request of the concerned State, assist in the following areas:

(a) Facilitation of tracing operations conducted within the framework of this instrument;

(b) Investigations to identify and trace illicit small arms and light weapons;

(c) Wherever possible, building national capacity to initiate and respond to tracing requests.

VII. Follow-up

36. States will report on a biennial basis to the Secretary-General on their implementation of this instrument including, where appropriate, national experiences in tracing illicit small arms and light weapons as well as measures taken in the field of international cooperation and assistance. This report may form part of a State's national report on its implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.

37. States will meet on a biennial basis to consider the reports mentioned in paragraph 36 above. These meetings will be held within the framework of relevant meetings convened for the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, where such meetings are in fact convened.

38. States will review the implementation and future development of this instrument within the framework of conferences that review the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.